

(the "Committee"), pursuant to the Commission's prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

In this matter, the Complainant, Justin Meeks, asserts that the Committee violated the disclaimer provisions for televised communications under 52 U.S.C. § 30120(d)(1)(B)(i) (formerly 2 U.S.C. § 441d(d)(1)(B)(i)) and 11 C.F.R. § 110.11(c)(3)(ii) by including an image of Pryor that was of insufficient size to clearly identify him as the candidate approving the communications.² Compl. at 1. On February 6, 2014, the Committee broadcast two 30-second television advertisements entitled "Linda" and "Courtney," which aired statewide in Arkansas. *Id.*; Attach. A, Seth McLaughlin, *Sen. Pryor knocks Rep. Cotton on Medicare in TV ads*, WASHINGTON TIMES, Feb. 5, 2014. Each advertisement depicts a woman airing her concerns about Pryor's opponent's record on Medicare. *Id.* According to the Complaint, the communications' "stand by your ad" disclaimers did not comply with the law because while they included an audio statement of Pryor approving the message, the accompanying photographic image of Pryor was "postage-stamp sized" and should have been either full-screen size or occupied at least 80% of the vertical screen height. *Id.* at 2.

The Response filed by Pryor's principal campaign committee is supported by an affidavit from Paul Johnson, the Committee's media buying consultant, stating that the televised campaign advertisements originally aired on February 6, 2014, and were produced by an experienced media vendor.³ Resp. at 2, Paul Johnson Aff. at 1-2 (Apr. 4, 2014). The Response

² On September 1, 2014, the Act was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

³ The Response provided the following website links to view the advertisements as they originally aired: <https://www.youtube.com/watch?v=43OwZnK1ddQ> ("Courtney"); <https://www.youtube.com/watch?v=MiskpgUMft0> ("Linda") (last visited Sep. 3, 2014). *See* Resp. at n. 2.

1 further asserts that as originally aired, the advertisements complied with the Act and Commission
2 regulations, in that each contained a spoken statement by Pryor: "I'm Mark Pryor and I approve
3 this message;" a written disclaimer stating: "Approved by Mark Pryor. Paid for by Mark Pryor
4 for U.S. Senate" that appeared on screen for the last four seconds of the advertisements; and an
5 image of Pryor appearing during the last four seconds of the advertisements in the lower left-
6 hand corner of the screen next to the written disclaimer. *Id.* at 2; Johnson Aff. at 3. According
7 to the Response, once questions were raised about the size of Pryor's image on the disclaimer
8 portion of the advertisements, the Committee on its own initiative, and before the filing of the
9 Complaint, instructed its media vendor to add a full-screen image of Pryor during the last four
10 seconds of the advertisements. *Id.* at 2; Johnson Aff. at 4-5. The advertisements with the full-
11 screen image of Pryor aired starting February 14, 2014. *Id.*

12 The Response points to the language in the Commission's regulation at 11 C.F.R.
13 § 110.11(c)(3)(ii)(B) pertaining to televised advertisements authorized by candidates, and argues
14 that it does not require that the photographic image of the candidate be of a particular size, but
15 only that it be "clearly identifiable." Resp. at 2-3. Last, the Response requests that the
16 Complaint be dismissed because the written and spoken disclaimers on the two advertisements,
17 together with the photograph of Pryor, made it clear that the candidate approved the messages,
18 and the public was not deprived of any meaningful disclosure. *Id.*

19 The Act requires that whenever a public communication is authorized and financed by a
20 candidate or his or her committee, the communication must include a disclaimer notice that
21 clearly states the communication has been paid for by the authorized political committee.
22 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. § 110.11(b)(1). The Act's

1 “stand by your ad” provisions specify that a television communication paid for or authorized by
2 a candidate’s principal campaign committee must include an oral statement by the candidate that
3 identifies the candidate and states that the candidate approved the communication, conveyed by
4 either an unobscured, full-screen view of the candidate making the statement, or the candidate in
5 voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate.

6 52 U.S.C. § 30120(d)(1)(B) (formerly 2 U.S.C. § 441d(d)(1)(B)); 11 C.F.R. § 110.11(c)(3)(ii).

7 The regulation further sets forth that a still image of the candidate shall be considered “clearly
8 identifiable” if it is at least eighty (80) percent of the vertical screen height. 11 C.F.R.

9 § 110.11(c)(3)(ii)(B). A written statement that the candidate approved the message must also
10 appear at the end of the communication in a clearly readable manner with a reasonable degree of
11 color contrast between the background and the printed statement, for a period of at least four
12 seconds. 52 U.S.C. § 30120(d)(1)(B)(ii) (formerly 2 U.S.C. § 441d(d)(1)(B)(ii)); 11 C.F.R.
13 § 110.11(c)(3)(iii).

14 The Commission’s Explanation and Justification describes the regulation at 11 C.F.R.
15 § 110.11(c)(3)(ii)(B), as a safe harbor provision because “[t]hat size is, in the Commission’s
16 judgment, a meaningful alternative to the full-screen requirement, and complies with Congress’s
17 mandate that the picture be “clearly identifiable.” Disclaimers, Fraudulent Solicitation, Civil
18 Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76,962, 76,966 (Dec.
19 13, 2002) (“E&J”).

20 The advertisements’ disclaimers as originally aired on February 6, 2014, include an audio
21 statement of Pryor approving the message, a similar written statement which appears to be at
22 least four percent of the vertical picture height, and a photographic image of Pryor which appears

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1 to be twice the height of the written disclaimer. *See* n. 3, *supra*. While we are not able to locate
2 on the public record the advertisements with the new disclaimers, which began airing February
3 14, 2014, (nor did the Response provide a website link to the new advertisements), the affidavit
4 attached to the Response sets forth that the new disclaimers included a full-screen view of Pryor.
5 Resp. at 2; Johnson Aff. at 5.

6 It appears that the original televised advertisements contained sufficient information to
7 clearly identify who paid for the communications, as well as an apparently adequate spoken
8 message of approval by the candidate. Moreover, the Committee took immediate action to
9 remedy any alleged disclaimer violation by increasing the candidate's photographic image to a
10 full screen view on new advertisements.⁴

11 Therefore, the Office of General Counsel recommends that the Commission exercise its
12 prosecutorial discretion and dismiss the matter as to Mark Pryor for U.S. Senate and Bob
13 Edwards in his official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).
14 Finally, the Office of the General Counsel recommends that the Commission approve the
15 attached Factual and Legal Analysis and the appropriate letters, and close the file.

16 **RECOMMENDATIONS**

- 17 1. Dismiss MUR 6782 as to Mark Pryor for U.S. Senate and Bob Edwards in his
18 official capacity as treasurer, pursuant to the Commission's prosecutorial discretion.
19 *See Heckler v. Chaney*, 470 U.S. 821 (1985).
20
21 2. Approve the attached Factual & Legal Analysis and the appropriate letters, and
22

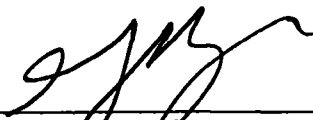
⁴ The Commission has traditionally dismissed cases such as this one, where the candidate and his or her committee substantially complied with the Commission's disclaimer regulations, the communications apparently contained sufficient identifying information to prevent the public from being misled as to who paid for them, and the alleged disclaimer violations, if any, were technical in nature and unintentional. *See, e.g.*, Cert. Jul. 9, 2009, MUR 6116 (Tim Cunha for Congress, *et al.*); Cert. Oct. 15, 2008, MUR 6016 (Ose for Congress, *et al.*).

3. Close the file.


General Counsel

9/4/14
Date

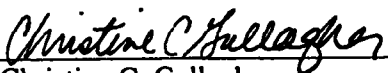
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